Sav-On Drugs, Inc. *and* Susan Enderby and Retail Clerks Union, Local 324, affiliated with United Food and Commercial Workers International Union, AFL-CIO, Party to the Contract

Retail Clerks Union, Local 324, affiliated with United Food and Commercial Workers International Union, AFL-CIO *and* Susan Enderby. Cases 21-CA-19801 and 21-CB-7570

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND ZIMMERMAN

On 26 April 1982 Administrative Law Judge Richard D. Taplitz issued the attached Decision in this proceeding. Thereafter, Respondent Retail Clerks Union, Local 324, filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings,[1] findings, and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondents, Sav-On Drugs, Inc., Anaheim, California, its officers, agents, successors, and assigns; and Retail Clerks Union, Local 324, affiliated with United Food and Commercial Workers International Union, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

[1] The Respondent Union excepts to certain rulings of the Administrative Law Judge at the hearing with respect to the participation of Sav-On Drugs, Inc., as co-Respondent. Even assuming that the Administrative Law Judge's rulings in this regard were erroneous, we do not find on this record that the Respondent Union was prejudiced thereby.

[2] Because we adopt the Administrative Law Judge's finding that the Respondent Union did not enjoy the support of a majority of employees in the appropriate bargaining unit, we need not consider the Union's exceptions with regard to its good faith in demanding and accepting recognition. See *Ladies' Garment Workers v. NLRB*, 366 U.S. 731 (1961).

DECISION

STATEMENT OF THE CASE

RICHARD D. TAPLITZ, Administrative Law Judge: This case was tried at Los Angeles, California, on November 2, 3, and 4 and December 8, 1981. The charges in Cases 21-CA-19801 and 21-CB-7570 were filed on December 8, 1980, by Susan Enderby, an individual. An amended charge was filed by the same Charging Party in Case 21-CA-19801 on January 20, 1981. An order consolidating those cases and a complaint issued on January 21, 1981. The complaint alleges that Sav-On Drugs, Inc., herein called the Company, violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act, as amended, and that Retail Clerks Union, Local 324, affiliated with United Food and Commercial Workers International Union, AFL-CIO, herein called the Union, violated Section 8(b)(1)(A) and (2) of the Act. Both the Company and the Union filed answers to the complaint. However, by letter to the Regional Director for Region 21 dated October 21, 1981, the Company requested that it be permitted to withdraw its answer. That request was renewed before me at the opening of the trial, at which time the request was granted and the Company's answer was withdrawn. Pursuant to Section 102.20 of the Board's Rules and Regulations the Company is deemed to have admitted as true all of the allegations of the complaint.[1]

Issue

The primary issue is whether the Company and the Union violated the Act by entering into a collective-bargaining agreement covering employees at a newly opened store when that new store could not be properly considered as an accretion to an existing multistore bargaining unit and when the Union did not represent an uncoerced majority of the employees of the new store.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs that have been carefully considered were filed on behalf of the General Counsel, the Company, and the Union. Upon the entire record[2] of the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, a California corporation with a principal place of business in Anaheim, California, is engaged in the operation of a chain of retail drugstores in California. During the calendar year ending December 31, 1980, the Company derived gross revenues in excess of $500,000. It annually purchases and receives goods valued in excess of $50,000 which originate directly outside of California. The Company is an employer engaged

[1] See *Dempubco Publishing Co.*, 244 NLRB 325 (1979).

[2] The unopposed motion of counsel for the General Counsel to correct the transcript to the record is hereby granted.

in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Sequence of Events*

The Company is a party to a collective-bargaining agreement with the Union that is effective from July 1, 1979, through June 30, 1983. The recognition clause of that contract sets forth a bargaining unit which consists of employees "who perform work within [the Company's] drugstores presently operated and hereinafter established, owned or operated by [the Company] within the present territorial jurisdiction of the Local Union." The territorial jurisdiction of the Union covers Orange County, the city of Long Beach, and parts of Los Angeles County. The contract contains a union-security clause which states:

> A. UNION SHOP. All employees shall, as a condition of employment, become members of the Union not later than the thirty-first (31st) day of their employment or the thirty-first (31st) day following the date of signature or the effective date of this Agreement, whichever is later, and shall remain members in good standing as a condition of continued employment.

Though the bargaining unit set forth in the contract covers employees in both present and future drugstores operated by the Company in the territorial jurisdiction of the Union, the practice of the parties has not conformed to the agreement. The Company operates either 38 or 39 stores in the Union's territorial jurisdiction. The Company contends that 31 of the stores with about 625 employees are unionized and that 8 stores with about 150 employees are not. The Union contends that 33 stores are unionized and 5 are not. In either event it is agreed that some of the Company's drugstores in the Union's territorial jurisdiction are not considered by the parties to be part of the multistore bargaining unit set forth in the contract.

The dispute in this case centers on the Company's store 321 in Orange Hill, California, which is within the Union's territorial jurisdiction.[3] James B. Dobson is manager of that store. He became manager on October 13, 1980, when he began preparing the store for the opening that took place on November 7, 1980. Though store 321 is part of the Company's chain of drugstores, Dobson has a good deal of local autonomy as manager of that store. He is responsible for the entire day-to-day operation of the store. He hires all employees, schedules their work, and is in charge of payroll. He is responsible for training new employees and for the discipline of all employees. Dobson's immediate supervisor is Maury Freidson, the Company's district manager, who works out of Anaheim, California. Dobson has consulted with Freidson with regard to firing employees when Dobson thought there might be some question and in those cases Freidson made the ultimate decision. However, in general, Dobson is responsible for the discharge of employees. With the help of his assistant managers, Dobson is in charge of the ordering of merchandise. He takes care of advertising though on some occasions he does so in conjunction with other store managers. In general he is responsible for all aspects of store 321 relating to employees, customers, and business.[4]

On October 13, 1980, Dobson put a sign on the sidewalk in front of store 321 saying that employment applications were being accepted. Two employees applied for work that day and both were hired. Dobson put an ad in newspapers and continued the hiring procedure. By the time the store opened on November 7, 1980, Dobson had hired 30 to 35 employees. More were hired after the store opened.[5] Shortly after Dobson began hiring employees he called his district manager, Maury Freidson. He told Freidson that some of the applicants had asked whether the store was union or nonunion and he asked Freidson what he should tell the employees. Freidson said that all he could say was that the Company was under contract with the Union. Dobson also spoke to another company official before the opening of the store. That official was Clifford Marker who is in charge of the Company's industrial relations. Dobson asked Marker if store 321 would be a union or nonunion store. Marker told Dobson to read article I of the union agreement. Article I of that agreement sets forth the bargaining unit and it covers drugstores presently operated and "hereinafter established, owned or operated by the Employer within the present territorial jurisdiction of the Local Union." Marker also told Dobson that they were a union store and that they were to cooperate with the Union. Dobson told Marker that some employees had asked if they had a choice in the matter and that Marker replied by saying that they could not get involved in that, that they had to treat it as if it were a union store, and that Dobson was not to interfere in anything.

All parties to this proceeding appear to be in agreement that the employees of store 321 constitute a separate appropriate bargaining unit. Paragraph 7 of the complaint alleges:

> 7. The following employees of Respondent Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:
>
> All employees of Respondent Employer at its Store Number 321, located at 4550 East Chapman Boulevard, Orange, California; excluding all

[3] The Company operates three other stores within a 12-mile radius of store 321. They are store 115, about 3 miles away; store 131, about 5 miles away; and store 261 in Tustin at an undisclosed distance.

[4] Both Dobson and his supervisor, District Manager Freidson, are supervisors within the meaning of Sec. 2(11) of the Act.

[5] Dobson used some temporary employees who were assigned from other stores for the opening of store 321. About 15 or 20 such employees were used to help prepare the store for the opening. About 12 temporary cashiers were used for the grand opening. Most of the temporary employees left after 2 days, but a few remained for a week or two.

office clerical employees, professional employees, guards, displaypersons, demonstrators, inventory employees, and supervisors as defined in the Act.

The Union in its answer and the Company by the withdrawal of its answer admit the allegations of that section of the complaint.

Of the 30 to 35 applicants that Dobson interviewed and hired prior to the opening of the store, 7 or 8 of them asked about the Union. He responded to each of those employees by telling them that the Company was under contract with the Union.

At or about 8 a.m. on November 6, 1980, the day before store 321 opened, the Company held a meeting with the 30 to 35 employees who had already been hired. The meeting took place in the receiving department in the back room of the store and it was attended by Company officials Dobson, Freidson, Vice President C. Lyle Call, President Robert L. Call, and Robert Sasine from the training department. It was an orientation meeting with regard to the Company's policies and procedures but in the course of that meeting the Union was mentioned. Both Dobson and Freidson addressed the employees concerning the Union. Dobson told the employees that the Company was under contract with the Union and that union representatives would be in the store to take their applications. One of the employees asked if the employees had to join the Union and Dobson replied by saying that the Company was under contract with the Union.[6] Freidson did not testify and a number of employees as well as Dobson gave somewhat varied versions of what he said. Dobson testified that Freidson told employees that union representatives would be in the store to take applications, that employees would be asked to sign cards, and that employees should read before signing. Russell MacDonald testified that, in response to an employee's question, Freidson said that the store had been predesignated as a union store and that there already was a contract with the Union; that, when another employee asked if the employees had a choice, Freidson said "no"; and that, when an employee asked if they could petition against the Union, Freidson replied by saying that they could but that it would not work. Stacy Toth testified that Freidson said that the store had a contract with the Union and people would come in to have the employees sign; and that, when an employee asked if they had to sign, Freidson said that he could not say anything about it. Brenda Basinger testified that Freidson said that the store had been designated as a union store; that an employee asked if the employees had to join and Freidson replied by saying that it had been designated as a union store; and that Susan Enderby asked if they would be terminated if they did not sign and Freidson responded by saying that it had been designated a union store and he could not say anything else. Susan Enderby testified that Freidson said that the Union would be sending some people in to sign employees up, that Enderby asked why they had to join, and that Freidson responded by speaking about a closed shop and saying that the Company was bound by a contract. Margaret Meils testified that an employee asked if it were a union store and that one of the management officials said that the Company honored the union contract. Donald Cunningham testified that an employee asked whether the employees had to join the Union and Freidson answered by saying that the Company was under contract with the Union. Narcisa Ardona testified that Dobson said the Company had a contract with the Union and that Freidson said that union representatives would talk to them. While the testimony of the various employees differed with regard to detail, the credible thread that goes through the bulk of the testimony is that Freidson told the employees that the Company had a contract with the Union, that he told them that union representatives would be there to sign them up, and that in response to employee questions concerning whether they had to join the Union Freidson replied by repeating that the Company had a contract with the Union. I believe that some of the employees read more into Freidson's statement than he actually said. However that misreading was fully understandable. Both Dobson and Freidson spoke about the Company having a contract with the Union. In an abstract sense those remarks were truthful because the Company did have a contract with the Union covering other stores. However in the context in which the remarks were made the employees were fully justified in assuming that the remarks were geared to store 321. Both Dobson and Freidson will be presumed to have intended the reasonably anticipated results of their conduct. They both led the employees to believe that store 321 had a contract with the Union. When asked whether the employees had to join, they responded by repeating that the Company had a contract with the Union. In fact the contract that they were referring to on its face covered store 321 and had a union-security clause that required the discharge of nonmembers after a certain grace period. Dobson and Freidson may well have believed that their ambiguous language could be used as a protective device. However they clearly conveyed to the employees the message that the Company was bound by a contract and the employees were subject to that contract and had to join the Union.

About 4 p.m. that day employee Susan Enderby had a private conversation with Freidson in the store. She asked him why she had to join the Union, why the store had been designated a union store, and why no one had asked whether or not they wanted to join. She also asked about store benefits. Freidson told Enderby that he could not answer any questions and that she was putting him in a very difficult position.[7]

Later that day Enderby had a private conversation with Dobson in the store. She asked Dobson what would happen to her if she refused to join the Union. Dobson replied that after a certain amount of time, if she did not join the Union, the store would receive notice from the Union that she would have to be terminated and the store would have to terminate her. She asked what

[6] This finding is based on the credited testimony of Dobson.

[7] These findings are based on the uncontradicted testimony of Enderby.

would happen if she joined but did not pay dues and he replied the same thing would happen.[8]

Store 321 opened on November 7, 1980. Store Manager Dobson followed the terms and conditions of the collective-bargaining contract from that day on. On November 20, 1980, the trust funds that were specified in the contract were notified that the Company signed a drug labor agreement which provided for the contributions to the drug trust funds. On that form, which the Union furnished to the trust funds, the phrase "Opened 11/7/80" was written over the words "effective Date of Contract." The Union takes the position that the Company is responsible for trust fund payments from the date the first employee was hired at the store, which would be October 13, 1980, rather than the date the store opened on November 7, 1980. It is the Union's position that the contract became effective retroactively to that date when the Union obtained majority standing on November 14, 1980.

Shortly after the store opened a notice with the Union's emblem on it was posted in the store saying that on a particular date the Union would be at the store so that the employees might make application.[9]

On November 13, 1980, the Union's business representative, Gary Crawford,[10] went to store 321 to solicit authorization cards. He was accompanied by union employees Joann Hanson and Morton Baum as well as by Sara Higuchi, an employee of the drug trust fund. Crawford asked Store Manager Dobson for a place in the store where he could sign employees for the Union. Dobson told him that he could use the employee lounge but that he should not interfere with business when employees were taking care of customers. On that day 14 employees signed authorization cards.[11] One of those employees, Narcisa Ardona, had a dispute with the Union over her card. She signed an application card and an authorization and shortly thereafter had second thoughts about it. On the same day she asked Crawford for the application back and Crawford told her to come back that afternoon. She was busy and did not come back that afternoon but did talk with Dobson. She told him that she had been pressured into giving the union card and that the Union would not give it back to her. The following day she again spoke to Crawford and asked for the card back. He said that she could go to the main office and pick it up. She never did pick up the card.[12]

Josephine Henley testified that Crawford told her that she had to sign the card and when she refused to do so he said that eventually she would have to sign. Crawford acknowledged that he spoke to Henley on November 14 but he denied telling her she had to sign. Henley may well have had the impression from the previous incidents that she had to sign but I credit Crawford that he did not specifically say that she had to. That evening Henley asked Dobson whether she had to sign and Dobson replied that all he could tell her was that the Company was under contract with the Union.[13]

As part of its organizational drive the union representatives told a number of employees that they would not have to pay initiation fees if they signed before a particular date. On November 25, 1980, Crawford posted a notice on the Company bulletin board which stated:

> *Attention employees*—if you have not made application with Retail Clerks Union, please do so by December 8, 1980, to receive free initiation. Thank you.
>
> Gary Crawford

Union Secretary-Treasurer Bob Gable credibly testified that union policy is to waive initiation fees for 30 days from the opening of a new store. That policy applies to all employees in the bargaining unit whether they joined before or after a majority was achieved.

On November 14 Crawford went back to the store and obtained three additional authorization cards.[14]

At that time Crawford also had an application for membership that contained an authorization that had been signed by Donald Cunningham on August 28, 1978, when he was working at store 115. In addition Crawford had a similar application from Mary Rawson which was signed on October 28, 1980, when she transferred from another store to store 321.[15] Crawford testified that from his observation of the Company's work schedule he concluded that there were 34 employees in the bargaining unit at that time and that he had authorizations from 19, which constituted a majority. He averred that shortly after he came to that conclusion he spoke to Susan Enderby about joining the Union. Enderby credibly testified that Crawford told her that it was a union store and she had to join, that if she did not join she would be terminated, and that it was to her advantage to join before December 7 so that she would not have to pay initiation fees.[16]

On November 13, 1980, Crawford filled out and signed a union form which stated that on November 14

[8] This finding is based on the credited testimony of Enderby. Dobson did not refer to this conversation in his testimony but he did aver that he had conversations with three or four employees, that an employee asked if she (or he) would lose her job if she did not sign; and that he replied that under the union contract, if she did not join within 30 days, after notification from the Union he would have to terminate her.

[9] Both the Company and the Union deny placing the notice there.

[10] Crawford is an admitted agent of the Union.

[11] They were Keith Williams, Jose Garcia, Narcisa Ardona, Margaret Miels, Blanca Herrara, Mary Grajeda, Cindy Valdez, Brenda Basinger, Teresa Fernandez, Nancy Tutor, Colleen Clancy, Robert Cone, Virginia Watson, and Irene Westergard.

[12] The finding is based on the credited testimony of Ardona and Dobson. Crawford acknowledged in his testimony that he told one employee that if she wanted her application back she could come to the union office and pick it up.

[13] This finding is based on the credited testimony of Dobson. Henley testified that Dobson simply said "Oh, okay," when she told them she was not going to sign. I believe that Dobson's recollection in this regard was better than Henley's.

[14] They were from Carolyn Ledbetter, Russell MacDonald, and Rosa Quevedo.

[15] Rawson went on sick leave on November 6, 1980, the day before the store opened, and never returned to store 321. She was, however, listed on the payroll that ended November 16, 1980.

[16] Crawford acknowledged in his testimony that he told her that he had a majority of cards in his pocket and that when a majority of employees wanted a union, everyone had to be union.

he obtained 17 cards and 2 applications at store 321; that there were 34 bargaining unit employees; and that he had verified the above with the work schedule for the payroll period ending November 16, 1980. He gave that form to the Union's secretary-treasurer, Bob Gable. On the same day, November 14, Gable called the Company's vice president and director of labor relations, Clifford Marker, and told him that the Union had majority status at store 321. Marker replied that he did not doubt the majority and that if the Union would send him a letter to that effect the contract would be put into effect. By letter to Marker dated November 14, Gable stated that the Union represented a majority of the employees at store 321 and had authorization cards from 19 of 35 bargaining unit employees. The Union did not make any claim to the Company prior to the opening of the store or prior to obtaining its claimed majority that the contract covered the new store because of an accretion.

The Company's payroll records for the week ending November 16, 1980, list the names of 43 employees at store 321. Three of those employees[17] are pharmacists and it was stipulated that they are not part of the bargaining unit. Two employees[18] are listed as employees of home stores other than store 321 and were temporary employees. They may not be counted as part of the bargaining unit. That leaves 38 employees. However, of those 38, 2 employees[19] were terminated before November 14, 1980, when the Union claimed majority status. They cannot be counted as part of the bargaining unit, so the total employee complement was 36.[20] Even assuming that the application of Cunningham was not stale and that Rawson was an employee of store 321 on November 14, the card of Ardona cannot be counted toward the majority. On November 13 she had clearly indicated to Crawford that she wanted the card back. Whether or not the Union violated the Act by refusing to return the card at that time, her manifestation that she did not want to authorize the Union to represent her was known to the Union on November 13 and she could not be counted as a union adherent on November 14. That would leave 18 authorizations and the Union did not represent a majority of the 36.

About the last week in November 1980 Crawford had a conversation with Enderby in the store. He told her that the deadline for joining was December 8 rather than December 7 and there were several people in the store who would not join. He asked her whether she was trying to instigate something and told her that she could get a lot of people in trouble, and that she could cause people to lose their jobs or to pay the initiation fee. She replied by saying that she did not understand why she did not have a choice. He said that it was a legal contract and she did not have a choice.[21]

On December 1, 1980, Crawford spoke to Enderby and Russell MacDonald at the store. One of those employees asked Crawford why it was going to be a union store. Crawford, who had a contract with him, showed them the accretion language in the contract. Crawford credibly testified concerning his response as follows: "First I said, 'The accretion language in the contract, when a new store opened that the store would be under a Union contract' . . . . They wanted to know why it was like that. And it was just in the contract. After we picked up a majority of the employees, then it more or less sealed the fact that it was a Union store."

Sometime thereafter employees circulated two petitions stating that employees did not want union representation. Though some of the employees signed the petitions nothing became of them.

B. *Analysis and Conclusions*

1. Introduction

An employer interferes with employee rights in violation of Section 8(a)(1) of the Act, assists a labor organization in violation of Section 8(a)(2) of the Act, and discriminates against employees in violation of Section 8(a)(3) of the Act when it recognizes and enters into a collective-bargaining agreement containing a union-security clause with a labor organization that does not represent an uncoerced majority of the employees in an appropriate bargaining unit. In a similar vein a labor organization coerces employees in violation of Section 8(b)(1)(A) of the Act and causes or attempts to cause discrimination in violation of Section 8(b)(2) of the Act when it enters into such a relationship. *Ladies Garment Workers v. NLRB*, 366 U.S. 731 (1961). Where an employer and a labor organization have a valid collective-bargaining agreement covering established retail stores, that agreement can be lawfully extended to a newly opened store even where a majority of the employees in the newly opened store have not authorized the labor organization to represent them if the new store can be properly considered as an accretion to the bargaining unit set forth in the existing contract. In such circumstances the labor organization's majority status in the overall unit is sufficient and there is no separate bargaining unit for the new store. Where the new store is not an accretion to the existing bargaining unit it must be treated separately and the recognition and contract in that separate unit is lawful only if the labor organization has secured uncoerced bargaining authorizations from a majority of the employees in the separate unit.

In the instant case the Union has taken what it describes as a "belt and suspenders" position. The "belt" is a theory that store 321 was a lawful accretion to the bargaining unit in its existing multistore contract with the Company. The "suspenders" position is that the Union

[17] Wilmer LaCrosse, Bill Kurduris, and Daniel Mitchel.

[18] Art Inuma and Christine Sumner. Daniel Mitchel was also listed as a temporary employee, but he was excluded as a pharmacist.

[19] Lynda Sue Hill and Annette Kiker. The Company's report to the drug trust funds for the month ending November 23, 1980, shows that Lynda Sue Hill was terminated on November 9, 1980, and that Annette Kiker was terminated on November 10, 1980.

[20] The Union contends in its brief that employees Alvarado and Graham were not part of the work force on November 14, 1980. However, they are both listed as employees on the Company's payroll records for the week ending November 16. In addition they are listed as employees on the report to the drug fund for the month ending November 23, 1980. The drug fund list shows terminations during that month and neither of those employees were listed as terminated. I find that they were both in the bargaining unit on November 14.

[21] These findings are based on the credited testimony of Enderby.

did represent an uncoerced majority of the employees in a separate bargaining unit consisting of the employees of store 321 as of November 14, 1980, when the contract was "entered into," and that contract was then made retroactive to the date the first employee was hired.

2. The accretion issue

The Union's argument that store 321 was an accretion to the existing bargaining unit, which covered drugstores presently operated and "hereinafter established," is substantially undercut by its own admission in its answer that the employees of store 321 constituted a unit appropriate for bargaining. The Board has held that the principles of accretion do not resolve the issue in a case where the stores in question "have a sufficient separate existence to constitute separate appropriate units." *Houston Division of Kroger Co.*, 219 NLRB 388 (1975). In an abstract sense different bargaining units can each be appropriate for bargaining. However, where the interrelation of operations, interchange of employees, bargaining history, and other criteria for determining accretion are such as to warrant a finding that an accretion exists, then in that particular factual situation a separate bargaining unit status for the new store is not appropriate. Here the Company and the Union have admitted that the employees of the new store constitute an appropriate unit. Moreover the controlling Board law establishes that store 321 was not an accretion to the overall unit. In *Sav-On Drugs*, 138 NLRB 1032 (1962), the Board modified its policy, which prior to that time had been to emphasize the administrative grouping of merchandising outlets in determining whether separate bargaining units were appropriate, and held that the same unit policies that apply to multiplant enterprises would also apply to retail chain operations. The Board set forth its underlying philosophy in *Melbet Jewelry Co.*, 180 NLRB 107, 109 (1969),[22] holding:

> The Board, here, must examine fundamentals and put the Section 7 rights guaranteed the employees and the appropriate unit concept of Section 9(b) into proper perspective. Excessive preoccupation with "appropriate unit" in the circumstances of this case leads to the abrogation of those rights. Section 7 of the Act is not subordinate to Section 9(b). As the Board indicated in *Haag Drug*,[3] quite the opposite is true. Section 9(b) directs the Board to select units to "assure to employees the fullest freedom in exercising the rights guaranteed by this Act . . ."—which rights, of course, are those set out in Section 7. If the Board were to permit the extension of the contracts covering other stores to the employees of this store (thereby very effectively disenfranchising them) on the ground that this store (although an appropriate unit in itself) may be part of that unit also, it would, in our opinion, do serious violence to the mandate that employees' rights are to be protected and that appropriate unit findings under Section 9(b) must be designed to preserve those rights.

[22] See also *Safeway Stores*, 256 NLRB 918 (1981); *Plumbing Distributors*, 248 NLRB 413, 414 (1980).

[3] *Haag Drug Company, Incorporated*, 169 NLRB No. 111, and the cases cited therein and in fn. 2 above.

In that case the Board described the factual situation and gave its conclusion as follows:

> It is evident from the facts noted above, to which the parties stipulated, that this case involves a typical retail chain-store operation. Thus, the factors of centralized managerial control are quite evident, and from these factors the Respondents argue that the appropriate unit in this case is comprised of all stores within the metropolitan trading area, and that the Orchard Park store is an accretion to the existing unit. We disagree. We find that the other factors involved in this case show that the Orchard Park store is a separate appropriate unit, and is not an accretion to the existing unit. Thus, the Orchard Park Store was staffed by new employees recruited through the New York State Employment Service, there has been almost no interchange of nonsupervisory employees between stores; and the store manager is in charge of the day-to-day operations of his store and possesses the power to hire and train new employees, to layoff and recall employees, and to act as the first step in the grievance procedure. There is, therefore, that degree of autonomy in the day-to-day operations of this single store which the Board has held in other cases under the same circumstances to warrant the finding that a single store unit is appropriate and there is no accretion.

The instant case even more clearly calls for the conclusion that the new store was not an accretion to the old bargaining unit. Here, Dobson, the manager of store 321, does all the hiring of employees, schedules their work and is in charge of payroll. He is responsible for the training of new employees and for the discipline of all employees. Though he sometimes confers with the district manager about the discharge of employees in questionable cases, he is generally responsible for the termination of employees. He and his assistant managers order merchandise and he has a substantial say in the store's to employees, customers and business. In addition the history of bargaining indicates that the multi-store bargaining unit set forth in the contract, which covers present and future drugstores in the Union's territorial jurisdiction, has not been applied to all the Company's drugstores in that territorial jurisdiction. A number of such stores are non-union. The Union has made no demand on the Company that recognition be granted with regard to store 321 on the basis of an accretion theory. Under all these circumstances I find that store 321 must be treated as a separate bargaining unit and not as an accretion to the bargaining unit set forth in the July 1, 1979, through June 30, 1983 contract between the Company and the Union. See *B. Siegel Co. v. NLRB*, 109 LRRM 2843 (6th Cir. 1982), enfg. 250 NLRB 776 (1980).

3. The question of majority status

Between October 13 and November 6, 1980, Dobson, the store manager of store 321, told 7 or 8 of the 30 to 35 applicants whom he hired that the Company was under contract with the Union. At a meeting with all the employees on November 6, 1980, Dobson and District Manager Freidson conveyed to the employees the message that the Company was bound by a contract with the Union, that the employees were subject to that contract, and that the employees had to join the Union. On the same day Dobson told employee Enderby that he would have to join the Union. On the same day Dobson told employee Enderby that he would have to terminate her if she did not join the Union. The store opened on November 7, 1980. On November 13 and 14, 1980, the Company gave the Union a location in the store to sign up employees. The Union then obtained authorization cards from all but two[23] of the employees it relied on for its claim of majority support. One of the positions taken by the Union was that store 321 was an accretion to the existing multistore bargaining unit covered by the 1979-83 contract. That contract contained a union-security clause. The Union claims that it is not responsible for the Company's actions if the Company interfered with the rights of the employees. However it was the Union's contract with the Company that the Company described to the employees. The bargaining unit in that contract covered employees in drugstores "presently operated and hereinafter established" within the territorial jurisdiction of the Union, and therefore, on its face the contract was applicable to store 321. The Union is in an untenable position where it argues that there was a binding contract containing a union-security clause covering the employees of store 321 through an accretion theory but that the Company should not have assisted the Union by telling the employees about that contract. The employees who authorized the Union to represent them on and after November 13, 1980, did so at a time when that contract, which appeared on its face to cover them and which contained a union-security clause, was in effect. They gave their authorizations after the Company informed them that the Company was under contract with the Union and after the Company gave them reason to believe that the contract covered them and that they would have to join the Union. Under these circumstances it may be fairly assumed that the authorizations were not the result of the free choice of the employees but were the fruits of unlawful coercion. I find that the Union did not represent an uncoerced majority[24] of the employees.[25] It follows and I find that the Company extended recognition and entered into a collective-bargaining contract containing a union-security clause with the Union when the Union did not represent an uncoerced majority of the employees in an appropriate bargaining unit in store 321 and that the Company thereby violated Section 8(a)(1), (2), and (3) and the Union violated Section 8(b)(1)(A) and (2) of the Act.

4. The additional allegations that the Company violated the Act

Paragraph 13(a) of the complaint alleges that the Company violated Section 8(a)(1) and (2) of the Act in October and November 1980 by Dobson's remarks to applicants for employment that store 321 was a "union" store. As found above in October and November 1980 Dobson told applicants whom he hired that the Company was under contract with the Union. The applicants were applying for work at store 321 and the only way they could have interpreted that remark was in terms of the Company having a contract with the Union at that store. As there was no contract covering that store, Dobson's remarks interfered with the employees' right guaranteed in Section 7 of the Act and assisted the Union in violation of Section 8(a)(1) and (2) of the Act.

Paragraph 13(b) of the complaint alleges that on November 6, 1980, the Company through Dobson violated Section 8(a)(1) and (2) of the Act by telling employees that store 321 had been designated a "union" store and that union representatives would be at the store to "sign them up." As found above, Dobson told the employees that the Company was under contract with the Union and that the union representatives would be there to sign them up. Though I did not find that Dobson told the employees that the store had been designated a union store, I find little distinction between that and the remark that the Company was under contract with the Union. By repeating to the assembled employees on November 6, 1980, what he had previously told to some of the applicants with regard to the Company being under contract with the Union, Dobson again violated Section 8(a)(1) and (2) of the Act. There is little to be added by a separate finding that Dobson violated the Act by telling employees that the Union would be there to sign them up and I therefore will not make that finding.

Paragraph 13(c) of the complaint alleges that the Company violated Section 8(a)(1) and (2) of the Act at the meeting on November 6, 1980, through Freidson's remarks to employees that were the same as those alleged to have been made by Dobson in paragraph 13(b) of the complaint. In view of the findings with regard to paragraph 13(b) of the complaint a separate finding of a violation by the Company through Freidson would be redundant.

Paragraph 13(d) of the complaint alleges that on November 13 and 14, 1980, the Company violated Section 8(a)(1) and (2) of the Act by granting the Union access to the employees at the store during working hours in order to establish contact with the employees. Such conduct in itself is not a violation of the Act. *Sav-On Drugs*, 227 NLRB 1638, 1647 (1977). While such conduct could arguably be considered a separate violation where it is

[23] Those two were Cunningham and Rawson, both of whom were transferees from other stores, who authorized the Union to represent them before the Union began its organizing drive at store 321 on November 13, 1980.

[24] In addition, as found above, the Union did not even represent a numerical majority of the employees.

[25] See *Sav-On Drugs*, 227 NLRB 1638 (1977); *Sheraton-Kauai Corp.*, 177 NLRB 25 (1969), enfd. 429 F.2d 1352 (9th Cir. 1970).

part of other misconduct, a full remedy for that other misconduct is all that is needed in the instant case.[26]

Paragraph 13(e) of the complaint alleges that, on or about November 13, the Company through Dobson violated Section 8(a)(1) and (2) of the Act by telling employees that the Company would discharge them if they did not sign up with the Union. Though I have not found that Dobson made such a remark on November 13 I have found that he did tell Enderby on November 6, 1980, that he would have to discharge her if she did not join the Union. November 6 is close enough to November 13, 1980, to be covered by the "on or about" language in the complaint. As there was no lawful contract or union-security clause in effect on November 6, 1980, I find that the Company through Dobson on November 6, 1980, violated Section 8(a)(1) and (2) of the Act by threatening Enderby with discharge if she did not join the Union.

5. The additional allegations that the Union violated the Act

Paragraph 14(a) of the complaint alleges that the Union violated Section 8(b)(1)(A) of the Act on or about November 13 and 14, 1980, by telling employees at store 321 that they had better sign up with the Union by December 7, 1980, or else they would be subjected to initiation fees of over $100. In itself there was nothing unlawful about the Union's policy with regard to waiving initiation fees. *Endless Mold, Inc.*, 210 NLRB 159 (1974); *B.F. Goodrich Tire Co.*, 209 NLRB 1175 (1974). Nothing is to be gained by a separate finding that the Union violated the Act by such conduct. To the extent that it was interrelated with unlawful conduct the remedy will be sufficient in that it will proscribe the unlawful conduct.

Paragraph 14(b) of the complaint alleges that the Union violated Section 8(b)(1)(A) of the Act on or about November 13, 1980, by refusing to return an employee's union application and authorization upon the employee's demand for its return. As found above Narcisa Ardona signed an application card and authorization on November 13, 1980, and shortly thereafter asked the Union to return it. Crawford told her to come back that afternoon but she was unable to do so. The following day she again asked Crawford for the card and he told her that she could go to the main office and pick it up. I do not believe that that incident was of sufficient gravity to warrant a finding that the Union violated the Act.

Paragraph 14(c) of the complaint alleges that on or about November 14, 1980, the Union violated Section 8(b)(1)(A) of the Act by telling employees at store 321 that it had been designated a "union" store. As found above on or about November 14, 1980, Crawford told Enderby that it was a union store, that she had to join, and that if she did not join she would be terminated.[27] I find that Crawford's remark to Enderby violated Section 8(b)(1)(A) of the Act.

Paragraph 14(d) of the complaint alleges that on or about November 17, 1980, the Union violated Section 8(b)(1)(A) of the Act by posting a notice instructing employees to sign up with the Union by December 8, 1980, in order to qualify for free initiation fees. For the reasons set forth in discussion of paragraph 14(a) of the complaint, I am unprepared to find a separate violation in that regard.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company and the Union, as set forth in section III, above, occurring in connection with the business operation of the Company set forth in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Company has engaged in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act, and that the Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, I recommend that they be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

It is recommended that the Company be ordered to withdraw and withhold recognition from the Union as the exclusive bargaining representative of the employees employed at its store 321, and to cease and desist from giving any force or effect to any collective-bargaining agreement covering those employees, or to any extension, renewal, or modification thereof, unless and until the Union is certified by the Board as the collective-bargaining representative of the employees at that store. Nothing herein shall be construed, however, to require the Company to vary any wage or other substantive features of its relationship with the employees which have been established in the performance of the contract. It is further recommended that the Union be ordered to cease and desist from acting as the collective-bargaining representative of the employees in store 321, and to cease and desist from giving any force or effect to any collective-bargaining agreement covering those employees, or to any extension, renewal, or modification thereof, unless and until the Union is certified by the Board as the collective-bargaining representative of the employees in that store. It is further recommended that the Company and the Union be ordered, jointly and severally, to reimburse all present and former employees employed at store 321, who joined the Union on or after November 13, 1980, for all initiation fees, dues, and other moneys which may have been exacted from them together with interest thereon as set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977).

[26] It is noted that in *Sav-On Drugs*, 227 NLRB 1638 (1977), a finding was made that the employer's conduct in permitting its premises to be used by a labor organization during working hours was part of a larger picture of coercion but the Board did not find a separate violation in that regard.

[27] Though Crawford may have believed at that time that a majority of the employees had authorized the Union to represent them, as found above, the Union did not have an uncoerced majority.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By recognizing the Union as the exclusive bargaining representative for the employees employed at store 321 at a time when that store was not an accretion to a multistore bargaining unit and when the Union did not represent an uncoerced majority of those employees, the Company violated Section 8(a)(2) and (1) of the Act.
4. By entering into a collective-bargaining agreement with the Union covering the employees of store 321 which contained a union-security clause, at a time when that store was not an accretion to a multistore bargaining unit and when the Union did not represent an uncoerced majority of those employees, the Company violated Section 8(a)(1), (2), and (3) of the Act.
5. By telling applicants for employment and employees of store 321 that the Company was under contract with the Union, at a time when that store was not an accretion to a multistore bargaining unit and when the Union did not represent an uncoerced majority of those employees, the Company violated Section 8(a)(1) and (2) of the Act.
6. By threatening to discharge an employee if she did not join the Union, at a time when there was no lawful contract or union-security clause in effect covering that employee, the Company violated Section 8(a)(1) and (2) of the Act.
7. By accepting recognition as the exclusive bargaining representative of the employees employed by the Company at store 321 and by entering into and maintaining a collective-bargaining agreement containing a union-security clause covering said employees at a time when that store was not an accretion to a multistore bargaining unit and when it did not represent an uncoerced majority of those employees, the Union violated Section 8(b)(1)(A) and (2) of the Act.
8. By telling an employee that store 321 was a union store, that she had to join the Union, and that if she did not join the Union she would be terminated, at a time when there was no lawful contract or union-security clause in effect, the Union violated Section 8(b)(1)(A) of the Act.
9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[28]

A. The Company, Sav-On Drugs, Inc., Anaheim, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Assisting or contributing support to Retail Clerks Union, Local 324, affiliated with United Food and Commercial Workers International Union, AFL–CIO, by recognizing or bargaining with that Union as the exclusive collective-bargaining representative of its employees at store 321, unless and until said Union is certified by the Board as the collective-bargaining representative of said employees.

(b) Maintaining or giving any force or effect to any multistore or other collective-bargaining agreement between it and said Union covering the employees at store 321, or any extension, renewal, or modification thereof, unless and until said Union is certified by the Board as the collective-bargaining representative of those employees.

(c) Telling applicants for employment or employees of store 321 that it is under contract with said Union, at a time when that store is not an accretion to a multistore bargaining unit and when said Union does not represent an uncoerced majority of those employees.

(d) Threatening to discharge any employee if that employee does not join the Union, at a time when there is no lawful contract or union-security clause in effect covering that employee.

(e) In any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Withdraw and withhold recognition from said Union as the collective-bargaining representative of its employees at store 321, unless and until said Union is certified by the Board as the exclusive collective-bargaining representative of such employees.

(b) Jointly and severally with said Union reimburse all former and present employees employed at store 321, who joined the Union on or after November 13, 1980, for all initiation fees, dues, and other moneys which may have been exacted from them with interest thereon in the manner provided in "The Remedy" section of this Decision.

(c) Post at its store 321 copies of the attached notice marked "Appendix A."[29] Copies of said notice on forms provided by the Regional Director for Region 21, after being duly signed by its authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Deliver to the Regional Director for Region 21 signed copies of said notice in sufficient number to be posted by the above-named Union in places where notices to members are customarily posted.

[28] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[29] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

B. The Union, Retail Clerks Union, Local 324, affiliated with United Food and Commercial Workers International Union, AFL-CIO, its officers, representatives, and agents, shall:

1. Cease and desist from:

(a) Acting as the collective-bargaining representative of the employees of Sav-On Drugs, Inc., at store 321, unless and until it is certified by the Board as the collective-bargaining representative of the employees at that store.

(b) Maintaining or giving any force or effect to any multistore or any other collective-bargaining agreement between it and said Company covering the employees of store 321, or any extension, renewal, or modification thereof, unless and until it is certified by the Board as the collective-bargaining representative of those employees.

(c) Telling any employee that store 321 is a union store, that the employee has to join the Union, or that the employee will be terminated if she does not join, where there is no lawful contract or union-security clause in effect covering that employee.

(d) In any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Jointly and severally with said Company reimburse all former and present employees employed at store 321, who joined said Union on or after November 13, 1980, for all initiation fees, dues, and all other moneys which may have been exacted from them with interest thereon in the manner provided in "The Remedy" section of this Decision.

(b) Post at its business offices, meeting halls, and places where notices to members are customarily posted, copies of the attached notice marked "Appendix B."[30] Copies of said notice on forms provided by the Regional Director for Region 21, after being duly signed by its authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Deliver to the Regional Director for Region 21 signed copies of said notice in sufficient number to be posted by the above-named Company in places where notices to employees are customarily posted.

(d) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

IT IS ALSO ORDERED that those portions of the complaint as to which no violation has been found are hereby dismissed.

[30] See fn. 29, above.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT assist or contribute support to Retail Clerks Union, Local 324, affiliated with United Food and Commercial Workers International Union, AFL-CIO, by recognizing or bargaining with that Union as the exclusive collective-bargaining representative of our employees at store 321, unless and until said Union is certified by the Board as the collective-bargaining representative of said employees.

WE WILL NOT maintain or give any force or effect to any multistore or any other collective-bargaining agreement between us and said Union covering the employees at store 321, or any extension, renewal, or modification thereof, unless and until said Union is certified by the Board as the collective-bargaining representative of those employees.

WE WILL NOT tell any applicant for employment or employee of store 321 that we are under contract with said Union, at a time when that store is not an accretion to a multistore bargaining unit and when said Union does not represent an uncoerced majority of those employees.

WE WILL NOT threaten to discharge any employee if that employee does not join said Union, at a time when there is no lawful contract or union-security clause in effect covering that employee.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act.

WE WILL withdraw and withhold recognition from said Union as the collective-bargaining representative of our employees at store 321, unless and until said Union is certified by the Board as the exclusive representative of such employees.

WE WILL jointly and severally with said Union reimburse all former and present employees employed at store 321, who joined the Union on or after November 13, 1980, for all initiation fees, dues, and other moneys which may have been exacted from them with interest.

SAV-ON DRUGS, INC.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT act as the collective-bargaining representative of the employees of Sav-On Drugs, Inc., at store 321, unless and until we are certified

by the Board as the collective-bargaining representative of the employees at that store.

WE WILL NOT maintain or give any force or effect to any multistore or any other collective-bargaining agreement between us and said Union covering the employees at store 321, or any extension, renewal, or modification thereof, unless and until said Union is certified by the Board as the collective-bargaining representative of those employees.

WE WILL NOT tell any employee that store 321 is a union store, that the employee has to join the Union, or that the employee will be terminated if she does not join, where there is no lawful contract or union-security clause in effect covering that employee.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act.

WE WILL jointly and severally with said Company reimburse all former and present employees employed at store 321, who joined our Union on or after November 13, 1980, for all initiation fees, dues, and other moneys which may have been exacted from them with interest thereon.

RETAIL CLERKS UNION, LOCAL 324, AFFILIATED WITH UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO